

UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON FOREIGN AFFAIRS
SUBCOMMITTEE ON ASIA, THE PACIFIC AND THE GLOBAL ENVIRONMENT

HEARING ON THE MULTILATERAL TREATY ON FISHERIES BETWEEN THE
GOVERNMENTS OF CERTAIN PACIFIC ISLAND STATES AND
THE GOVERNMENT OF THE UNITED STATES
("SOUTH PACIFIC TUNA TREATY")

SEPTEMBER 22, 2010

STATEMENT BY WILLIAM GIBBONS-FLY
DIRECTOR, OFFICE OF MARINE CONSERVATION
BUREAU OF OCEANS, ENVIRONMENT AND SCIENCE
U.S. DEPARTMENT OF STATE

Mr. Chairman and distinguished members of the Subcommittee:

Thank you very much for the invitation to testify today. It is a pleasure to appear before you once again to discuss the Multilateral Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States, often referred to as the South Pacific Tuna Treaty (hereinafter, "the Treaty"), and related issues. In particular, I understand you are interested in an update on our ongoing efforts to negotiate an extension of the Treaty beyond the current operational timeframe, which extends through June 14, 2013.

I am happy to provide such an update Mr. Chairman. In addition, I will also say a few words about the related issue of conservation of tuna resources in the Pacific region.

As you know Mr. Chairman, the Treaty provides the basis for up to 40 U.S. flagged tuna purse seine vessels to operate in the waters under the jurisdiction of the 16 Pacific Island States that are party to it. Under the Treaty and an associated Economic Assistance Agreement with the Forum Fisheries Agency (hereinafter, "the Agreement"), the Pacific Island States receive from the U.S. fishing industry and the U.S. Government licensing fees and related economic assistance that currently exceeds \$25 million annually. When I last appeared before you on April 2, 2009, my testimony contained considerable background on the Treaty, its history and the benefits that have accrued to both sides since the Treaty first entered into force in 1988. With one exception, I will not repeat that background here, but instead refer members of the Subcommittee to that testimony for further information.

The one key point that I do want to reiterate here Mr. Chairman is that the implementation of this Treaty would not be possible without the dedicated work of the

NOAA Fisheries Pacific Islands Regional Office (PIRO) and its field station in American Samoa, as well as other NOAA offices. PIRO manages the day-to-day operational details of Treaty implementation and devotes considerable time, energy and resources to this task. In this regard, the staff at PIRO works closely with us at the State Department to ensure both that the United States complies fully with its Treaty obligations and that actions by the Forum Fisheries Agency and the Pacific Island States in respect of the U.S. fleet also comport with the relevant Treaty provisions. Nor would the implementation of the Treaty be possible without the active support and participation of the American Tunaboat Association and the U.S. vessel owners and operators that comprise the U.S. tuna purse seine fleet operating under the Treaty. As noted in past testimony, the U.S. fleet has long set the standard among the many fleets operating in the region for responsible operations, full and complete reporting, and compliance with agreed measures.

Since my last testimony, Mr. Chairman, we have had two negotiating sessions with the Pacific Island Parties with a view to extending and, as necessary, amending the Treaty. The first of these took place in October 2009 in Honiara, Solomon Islands, the second in Honolulu, Hawaii, in July of this year. In addition, our annual Treaty consultations, which took place on the island of Niue in March of this year, provided an additional opportunity to exchange views on issues related to the Treaty negotiations.

In some respects, Mr. Chairman, although the discussions to date have helped each side to better understand the positions and concerns of the other, the status of the negotiations is not far advanced from where it was when I last testified in April 2009. That is, the negotiations are complicated by a number of factors and the outcome remains uncertain. To better understand the situation, I believe it will be helpful if I outline some of these factors and provide additional details.

To begin, Mr. Chairman, there is still an open question as to whether the Pacific Island States continue to attach the same value to the Treaty as they have in the past. Some Pacific Island officials have gone so far as to say that the Treaty hinders, rather than supports, their own domestic development aspirations. Some of these officials and their advisors have suggested that the Pacific Island Parties would do better to forgo the \$25 million annual payment provided pursuant to the Treaty and the associated Agreement in order to pursue additional bilateral arrangements with other fishing States or to further develop their own domestic fleets and industries.

However, we believe this calculation is based, at least in part, on a misunderstanding among some Pacific Island Parties; a misunderstanding that we have been working hard to clarify. We understand that advisors to the Pacific Island Parties are telling them that, should the Treaty not be extended, the only loss to the Pacific Island Parties is the approximately \$6 million provided by the U.S. industry, and that this loss can more than be made up by making licenses currently issued to the U.S. fleet available to other vessels. We have sought to convey that the total financial package of more than \$25 million is directly tied to the implementation of the Treaty, in large part because of the value of this multilateral framework as a forum for coordinating and cooperating with the

Pacific Island Parties on a range of other issues, including conservation and management of the region's fish stocks, fisheries enforcement cooperation, capacity building, and other related issues. As a result, we have been clear and unambiguous that the continuation beyond 2013 of this package of fees and related economic assistance is likewise dependent on the extension of the Treaty and the associated Agreement beyond that date. Yet, even so, questions on this matter persist.

Having said that, Mr. Chairman, the Pacific Island States are entirely within their rights to decide who should be granted access to fish in waters under their jurisdiction as well as the terms and conditions of that access. If they decide that the relationship with the U.S. Government and fishing industry under the Treaty is no longer in their collective best interest, they have every right to consider such alternatives as they see fit. At the same time, we believe the majority of Pacific Island States are not looking to abandon the relationship with the United States that has been established over the past twenty two years. We believe that most continue to see value in this relationship and would like to see it continue. In this regard, if the Pacific Island Parties believe the current level of compensation under the Treaty is insufficient, we have requested that they provide us with their estimate of today's value of the Treaty should it be extended at something close to the current terms and conditions. We have noted that in each of the previous negotiations to extend the Treaty and the associated Agreement, the financial package of licensing fees and U.S. Government economic support funds to the Pacific Island Parties has increased. We have made clear that should they have a proposal in this regard, we are open to considering it. To date, however, we have received no such proposal.

Other issues are related to the operational conditions that would apply to the U.S. fleet under any extension of the Treaty. One key issue in this regard is the extent to which, under an extended Treaty, the U.S. fleet would operate under the "Vessel Day Scheme" developed by the Parties to the Nauru Agreement. Although this issue was discussed to some extent in my previous testimony, I will take just a moment to review the background of the Vessel Day Scheme.

To begin, the Parties to the Nauru Agreement (or "the PNA") are a group of eight countries, all of which are members of the South Pacific Forum Fisheries Agency (FFA) and thus Party to the Treaty we are discussing here today. These countries are Kiribati, Marshall Islands, Federated States of Micronesia, Nauru, Palau, Papua New Guinea, Solomon Islands and Tuvalu. The large majority of the tuna taken in waters under the jurisdiction of the Pacific Island Parties is taken in the waters under the jurisdiction of these eight countries.

The PNA have developed the Vessel Day Scheme over the past several years in an effort to maximize the return they receive from licensing vessels to fish in waters under their jurisdiction. The theory is that by limiting the number of "fishing days" available, and having those that want to fish in the region compete or bid against each other for the available pool of days, the competitive market for "fishing days" will produce maximum economic returns to the States in question.

To be clear, the idea of maximizing revenues to the Pacific Island States from the tuna resources in waters under their jurisdiction is an idea that we very much support. Throughout its history, through a combination of industry licensing fees and Government economic support funds, the Treaty has provided a higher economic return to the Pacific Island States than any other agreement in the region. Because of the value of the Treaty as more than a simple access arrangement for U.S. vessels, the economic returns to the Pacific Island Parties historically have exceeded the comparable value of a straight access arrangement for U.S. vessels. We have sought to make clear our expectation that the Treaty would continue to maintain this distinction should it be extended. At the same time, the manner in which the Vessel Day Scheme is being implemented, or perhaps more accurately, not being implemented, is the source of some concern.

We first learned of plans to develop the Vessel Day Scheme in 2005, when the concept was presented to us at our annual Treaty consultation with the Pacific Island Parties. At that time, we expressed a strong interest in working with the PNA, and the FFA more broadly, to help develop a Vessel Day Scheme that met their objectives and could be implemented in a manner not inconsistent with the Treaty. The Pacific Island States politely declined this offer. At that time, and for the next three years, we received assurances that the rights of U.S. vessels granted under the Treaty would not be affected by the implementation of the Vessel Day Scheme. We were told that the days required by the U.S. fleet would be accommodated from an initial pool that would also accommodate vessels fishing with licenses issued under what is called the "FSM Arrangement" (for the Federated States of Micronesia, where the agreement was adopted), the only other licensing arrangement that provides access to waters under the jurisdiction of multiple countries.

That situation changed in 2009, when the PNA notified us that the U.S. fleet would be required to operate under the Vessel Day Scheme and, in addition, be limited to a total of 2,773 fishing days. This number represents approximately one-third to one-quarter of the level of fishing effort by U.S. vessels currently authorized under the Treaty.

As noted above, the current provisions of the Treaty, under which the U.S. fishing industry and Government provide in excess of \$25 million a year, are operational through June 14, 2013. And yet, the letter from the PNA stated that the fishing effort authorized for the U.S. fleet was to be cut by somewhere between 65 and 75 percent as soon as this year, apparently without any reduction in the corresponding financial package. As you might guess, Mr. Chairman, the United States has resisted what would amount to an effort by one side to change unilaterally the terms of our existing and longstanding Treaty.

The United States has been clear that, under the proper conditions, we are not opposed to considering the application of the Vessel Day Scheme to the U.S. fleet. However, before agreeing to proceed along this path, we are seeking clear assurances that the Vessel Day Scheme will be applied to the U.S. fleet in a fair and equitable manner, at levels approximately consistent with the levels currently authorized under the Treaty, and under the same conditions as those applied to other fleets in the region.

In our efforts to better understand the operational requirements of the Vessel Day Scheme, we have asked the PNA if there is any up-to-date document that reflects the rules of the Scheme as it is currently being implemented. The last version we received was from May 2009, but we understand the Scheme has been amended significantly since that time and that such revisions are still underway. Among the key issues for clarification is how days, once assigned, are counted against the total, which is done using such concepts as “fishing days” and “non-fishing days.” As of today, Mr. Chairman, the PNA has not been able to provide us with an answer to this fundamental question, nor have they been able to provide a clear definition of either of these terms.

In addition, we have asked if any of the PNA countries have published regulations or guidelines, or have any other written guidance or documentation, available to the public, describing how the Scheme is being implemented in their own country. Again the answer to date appears to be no.

On this latter question, the PNA staff in the Marshall Islands recently assured us that, despite the lack of national regulations or published guidance by its member States, all PNA members are implementing the Vessel Day Scheme through their bilateral agreements with their other fishing partners. Almost without exception, however, the terms of these bilateral arrangements are not made public, so it is impossible to know whether and to what extent they reflect the application of the Vessel Day Scheme.

The only such bilateral access arrangement for purse seine vessels that, to our knowledge, is in the public domain is the agreement between the European Community and the Solomon Islands. Both the European Community and the Solomon Islands are to be highly commended for this because it introduces a level of transparency regarding such bilateral arrangements that is otherwise lacking. The bilateral agreement between the EC and the Solomon Islands contains no reference to the Vessel Day Scheme or any related concept. Discussions with representatives in other countries have confirmed that there is no uniform or consistent application of the Vessel Day Scheme across countries and fleets.

To their considerable credit, Mr. Chairman, some representatives from PNA members have acknowledged these shortcomings. However, this has not yet translated into a change in the negotiating position of the PNA as a whole. However, based on our most recent discussions, it should be clear that the United States is not prepared to be legally bound under the Treaty or any other arrangement to a regime for which there are no clearly established rules, no clear definitions of fundamental concepts, and no uniform application to other fleets operating in the region.

In effect, our position with respect to the Vessel Day Scheme is essentially the same as when the topic was first presented to us in 2005. That is, if the PNA, and the FFA more broadly, are interested in working cooperatively with the United States to develop a workable, well-defined and transparent Vessel Day Scheme to be applied to all fleets seeking access to fish in the region, we are open to those discussions. However, those

discussions would require quite a different approach on the part of the PNA members than we have seen to date.

In addition to the Vessel Day Scheme, there are a number of pending issues to be resolved if we are to conclude successfully the negotiations to extend the Treaty. Among the most important of these are the aspirations of the small island developing States to gain additional benefits from the fishery resources under their jurisdiction and the industries they support. This is an issue to which the United States attaches significant importance and we will be seeking to learn more about the specific proposals from the FFA members on these matters. Other significant issues include market access for tuna products, the level of financial compensation and development assistance to be reflected in the Treaty and the associated Agreement, the relationship between the Treaty and the national laws of the Parties, among others. In the interest of time, Mr. Chairman, I will not cover these issues in detail here, but am happy to discuss them should there be any questions.

With that, Mr. Chairman, let me take just a minute to discuss the critical issue of the conservation of tuna resources in the Pacific and how the Treaty relates to those efforts.

There are strong indications that the level of fishing effort on some species of tunas in the Western and Central Pacific exceeds levels that are sustainable in the long term. This is particularly true for bigeye tuna and, to a lesser extent, yellowfin tuna as well. In response, the best available scientific advice suggests that fishing effort in the region should be reduced from current levels.

The species of greatest concern at present is bigeye tuna. Bigeye tuna is not a target species of the purse seine fishery, but the purse seine fishery does result in significant catches of juvenile bigeye tuna, in particular during sets on "fish aggregating devices" or FADs. All purse seine fleets fishing in the region use FADs as a fishing strategy, including the U.S. fleet, and we must find ways to reduce catches of juvenile bigeye tuna caught in association with FADs. International efforts are underway to achieve this objective and the United States must play an active part in those efforts and contribute in a significant way.

Because of the situation described above, the United States has been criticized in some quarters for exercising the fishing rights granted by the Pacific Island Parties under the Treaty to fish in waters under their jurisdiction. Interestingly, this same criticism has not extended to the several other countries with dozens of vessels licensed to fish in the region under much less transparent and less strict conditions than those that apply to the U.S. fleet. Remember, all fishing by the U.S. fleet in these waters takes place only under licenses issued by the Forum Fisheries Agency on behalf of its member States, in full compliance with the terms and conditions of the Treaty that has been in force for more than 20 years.

Moreover, Mr. Chairman, the criticism that has been directed at the United States ignores some important facts. Since 1990, the total catch of bigeye tuna taken by purse seine

vessels in the Western and Central Pacific, as reported by the Secretariat of the Pacific Community (SPC), has increased four fold, from 12,000 metric tons in 1990 to 47,000 metric tons in 2008. And yet, the U.S. fleet is smaller today than it was then, while the fleets of many other nations have grown considerably and continue to grow, seemingly without limits.

As the number of purse seine vessels operating in the Western and Central Pacific continues to increase, the United States remains the only fleet in the region operating under a legally binding limit on the number of vessels that may be licensed to fish in the region. Moreover, Mr. Chairman, the United States is the only country that has already accepted, adopted and implemented a 20 percent reduction in the number of vessels that may be licensed to fish in the region. When the Treaty was last extended in 2003, the number of licenses authorized decreased from 50 to 40 to accommodate the interests of the Pacific Island States to make licenses available to others, including for the development of their own domestic fleets.

As noted, in addition to the U.S. vessels operating under the Treaty, the Pacific Islands Parties also issue licenses to fish in the region to vessels from a number of other States. There is little question that the cumulative number of vessels fishing under such licenses results in a level of fishing effort that is too high. The United States has long expressed its concern about this state of affairs and, in particular, the steadily increasing number of vessels entering the tuna purse seine fishery in the region. At the last meeting of the WCPFC in December 2009, the Chairman of the Commission reported with concern that plans are in place to add as many as 40 additional vessels to the fishery over the next five years.

In fact, one of the troubling features of the Vessel Day Scheme discussed earlier is that it removed a previously agreed limit on the number of vessels that could be licensed to fish in the region at any given time. In this regard, the designers of the Vessel Day Scheme appear to have made a conscious decision to encourage a pool of vessels that is as large as possible to bid for available days, with the idea that this will maximize the value of the days and, as a result, revenue. History has repeatedly shown, Mr. Chairman, that this focus on maximizing revenue in the short term, without restrictions of the number of participants in a given fishery, is a recipe for overcapitalization, overfishing, resource depletion, declining revenues and severe adverse consequence for all concerned.

If we are to address issues of long-term conservation and sustainability of the region's fish stocks, Mr. Chairman, we must find a way to limit and eventually reduce the number of vessels operating in the region. The United States has been a strong advocate of such controls on the level of fishing effort. Our longstanding position has been that when the coastal States and fishing States of the region are prepared to enter into serious negotiations to achieve a real reduction in the level of fishing effort in the region, the United States will not only participate in that effort, but will work actively to bring such negotiations to a successful conclusion. In so doing, we have made clear that we will be prepared to accept a fair and equitable share of any reduction of fishing effort, including by the U.S. tuna purse seine fleet.

However, Mr. Chairman, this is not what is occurring. For example, the proposal described earlier to limit the U.S. fleet to 2,773 days under the Vessels Day Scheme is not linked to any overall reduction of fishing capacity in the region; in fact, quite the contrary. In seeking to establish this as a limit under the Treaty, the PNA members have said they would make additional days required by the U.S. fleet available under separate bilateral agreements. In response, as stated in my previous testimony, the United States continues to view the Treaty with all the member States of the Pacific Forum as the sole vehicle governing access by U.S. vessels to waters under the jurisdiction of the Pacific Island Parties.

So, while the United States is ready and willing to discuss reductions to its fleet as part of an overall capacity management and reduction effort, there is little to be gained if any such reductions are more than offset by increases in vessels from other fishing States; States, in many cases, with no previous history of fishing in the region, no record of compliance with agreed measures and no history of cooperation to conserve and manage the region's fishery resources.

As you can see Mr. Chairman, we continue to face a number of challenges in our efforts to provide access to the U.S. fleet to fish in the Pacific while at the same time working to conserve and manage the tuna resources of the Pacific on a sustainable basis. As noted earlier, it is up to the Pacific Island Parties to determine whom they choose to license to fish in the waters under their jurisdiction and the terms and conditions of that access. At present, it is still not clear whether we will be able to reach agreement on terms and conditions that are mutually acceptable. Despite these challenges, however, our sense is that the majority of the Pacific Island States continue to view the United States as a reliable partner and that they want the relationship established over the twenty-two year life of the Treaty to continue into the future. Our discussions with the Pacific Island Parties will continue and we will work in good faith toward a fair and equitable agreement that meets the objectives of both sides.

Mr. Chairman and distinguished members of the Subcommittee, thank for the opportunity to be here and to present these views. I am happy to respond to any questions.